

Nicholson (Migration) [2020] AATA 2885 (1 May 2020)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs Catherine Nicholson
CASE NUMBER:	1908964
HOME AFFAIRS REFERENCE(S):	BCC2017/4522372
MEMBER:	Steven Griffiths
DATE:	1 May 2020
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • Cl.820.211(2)(d)(ii) of Schedule 2 to the Regulations • cl.820.211(2) of Schedule 2 to the Regulations • cl.820.221(1) of Schedule 2 to the Regulations

Statement made on 1 May 2020 at 1:38pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – compelling reasons to waive Schedule 3 criteria – withdrawal of Parent Visa sponsorship – legal action within family – assistance to the sponsor with health issues – significant risk of separation to the health of the sponsor – genuine and ongoing relationship – high level of companionship and emotional support – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65

Migration Regulations 1994, Schedule 2, cl 820.211, 820.221; Schedule 3 Criterion 3001; r 1.15

CASES

Babicci v MIMIA (2005) 141 FCR 285

He v MIBP [2017] FCAFC 206

MZYPZ v MIAC [2012] FCA 478

Waensila v MIBP [2016] FCAFC 32

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, Mrs. Catherine Nicholson (nee Stretch), applied for the visa on 29 November 2017 on the basis of her relationship with her sponsor, Mr. Michael Nicholson. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211 because the delegate was not satisfied the applicant was the spouse, as defined in s.5F of the Act, of the sponsor.
4. The applicant was represented by her registered migration agent.
5. The Tribunal has reviewed the information provided by the applicant and determined it appropriate to resolve the review application without holding a hearing.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The Tribunal has taken into consideration all the evidence in the Department of Immigration file, the Tribunal file, additional information provided by the applicant prior and during the hearing and the oral evidence from the Tribunal hearing.

8. ISSUE

9. The issue in the present case is whether the visa applicant is the spouse, as defined in s.5F of the Act, of the sponsor.

10. BACKGROUND OF THE EVIDENCE

11. Mrs. Nicholson, was born in Glasgow, Scotland, United Kingdom, in 1939. Her parents are deceased, and she has a sister and brother, born 1933 & 1935, with the brother living in the United Kingdom and the sister deceased. She married in 1964, has 3 daughters, born 1965, 1967 & 1968, living in Australia, New Zealand and the United Kingdom respectively, with her husband dying in 2006. She arrived in Australia on 10 January 2012 on a Tourist Visa 676, to cease on 17 March 2013 and has been on a series of bridging visas from 5 March 2013.
12. Mr. Nicholson was born in Australia in 1947. His parents are deceased and he has 2 brothers, born 1949 & 1950, living in Australia. He married in 1981, has a daughter and son, born 1982 & 1984, and divorced in 1993.

13. INFORMATION TO THE TRIBUNAL

14. Since the Department of Immigration made its decision, the applicant has provided further information to the Tribunal including:-

15. Review application lodged 11/4/19
16. Tribunal correspondence on applicant Medicare
17. Sponsor Last Will and Testament, 15/4/19
18. Applicant Last Will and Testament, 15/4/19
19. Applicant UK pension details
20. Parties purchases and hotel accommodation
21. Sponsor medical records, 10/10/19
22. Parties joint name Commonwealth accounts, total of \$ 133,000 approximately held, 13/10/19
23. Parties documents on rent / purchase of property, 10/10/19
24. Applicant pre-paid funeral plan, 28/6/19
25. Sponsor Centrelink details, 15/10/19
26. Document on Aneurysms, which the sponsor is dealing with and the assistance provided by the applicant
27. Form 888 Statement, Trevene Roper, daughter of applicant, 20/11/19
28. Form 888 Statement, Patricia Symons, friend of applicant, 12/10/19
29. Form 888 Statement, Christine Nicholson, sister-in-law of sponsor 24/10/19
30. Form 888 Statement, David Nicholson, brother of sponsor, 24/10/19
31. Form 888 Statement, Susan Keenihan, friend of sponsor, 28/10/19
32. Form 888 Statement, Robert Keenihan, friend of sponsor, 28/10/19
33. Sponsor Statutory Declaration, 25/11/19
34. Applicant Statutory Declaration, 25/11/19
35. Migration Agent submission, 27/11/19
36. Photos of the parties with friends, wedding, at home, on holiday
37. Movement Records, 5/3/20
38. Confirmation by the migration agent the applicant is deaf and a hearing will need to be face to face
39. Response by the visa applicant on 14 April 2020 to the invitation from the Tribunal to comment on information provided, for which a Section 376 Certificate has been issued, which could be the reason, or part of the reason, for affirming the decision of the delegate.
40. Joint names electricity account, April 2020

Is the sponsor an Australia citizen, and Australian permanent resident or an eligible New Zealand citizen?

41. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian Permanent Resident or an eligible New Zealand citizen. The Tribunal accepts the sponsor being an Australian citizen by birth.

Does the applicant meet Schedule 3 criteria, or should the criteria be waived?

42. An applicant who is not the holder of a substantive visa at the time of application must meet certain criteria in Schedule 3 to the Regulations. With limited exceptions not relevant to this case, he or she must satisfy Schedule 3 criteria 3001, 3003, and 3004 unless the Minister is satisfied that there are compelling reasons for not applying those criteria: cl.820.211(2)(d)(ii).
43. It is not in dispute that the applicant did not have a substantive visa at the time of application. As the applicant did not enter Australia as the holder of a Subclass 995 visa or special purpose visa, the issue is whether the applicant satisfies the Schedule 3 criteria unless there are compelling reasons for not applying those criteria. These criteria are set out in the attachment to this decision.

Criterion 3001

44. In order to satisfy criterion 3001, the application for the visa must have been lodged within 28 days of the relevant day. The 'relevant day' is defined in 3001(2), as set out in the attachment to this decision.
45. In order to meet Schedule 3 Criterion 3001, the application must have been validly made within 28 days after the relevant day. For the purpose of this application, the last relevant day is the last day the applicant held a substantive visa. The applicant lodged her application on 29 November 2017 and her last substantive visa ceased on 17 March 2013.
46. As the visa application was not made within 28 days of the relevant day, the applicant does not satisfy criterion 3001.

Compelling reasons

47. As the Tribunal has found that the applicant does not meet the relevant Schedule 3 criteria, it is required to consider whether there are compelling reasons for not applying the criteria.
48. The expression 'compelling reasons' is not defined for these purposes. However, the reasons should be sufficiently convincing to move the decision-maker to exercise its discretion to waive the requisite criteria and the circumstances must be sufficiently powerful to lead a decision-maker to make a positive finding in favour of waiving the required criteria: *MZYPZ v MIAC* [2012] FCA 478 at [10]; *Babici v MIMIA* (2005) 141 FCR 285 at [24]. Circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made: *Waensila v MIBP* [2016] FCAFC 32.
49. The applicant presented documented evidence of her relationship with the sponsor, with the relationship commencing in November 2016, committed to a shared life together in July 2017 and marrying in November 2017. The Tribunal acknowledges the applicant's claims and has considered the various documents she has provided in support of the claim that the relationship is a genuine one. However, the Tribunal makes no assessment as to the nature of the applicant's relationship at this stage with the sponsor and has accepted at face value

the claims made by the parties that they were and continue to be in a genuine relationship together and the circumstances of that relationship for the purposes of this decision.

50. The criteria in cl.820.211(2)(a) is that the applicant is the spouse or de facto partner of the sponsoring partner. This, in part, requires the applicant and the sponsor to be in a genuine, continuing and exclusive relationship. If an applicant does not hold a substantive visa and does not meet the Schedule 3 criteria, the requirement in cl.820.211(2)(d)(ii) to provide compelling reasons for not applying those criteria is in addition to the criteria in cl.820.211(2)(a). Accordingly, simply the fact that the parties are in a genuine and continuing relationship is not of itself a compelling reason for not applying the Schedule 3 criteria as it is already a criteria which must be satisfied in order to meet the criteria in cl.820.211(2)(a). If the relationship itself can be considered a compelling reason for not applying the Schedule 3 criteria, it must be the particular aspects of the relationship which must provide a compelling reason for not applying the Schedule 3 criteria and not simply the fact that the parties are in a relationship.
51. The Tribunal is mindful that the Explanatory Statement to Migration Regulations (Amendment) 1996 No. 75, in providing examples of compelling reasons, states:

Where the applicant and his or her nominator are already in a long-standing relationship which has been in existence for two years or longer... In these circumstances, waiver **may** be justified by the hardship which could result if the Schedule 3 criteria were not waived (Tribunal's emphasis).
52. The explanatory statement and any guidelines produced by the Department do not provide criteria which, if met, satisfy the requirements of the legislation. If the nature of the relationship between the applicant and the sponsor were to be a compelling reason for not applying the Schedule 3 criteria, all the factors of the relationship, including its duration, the level of financial and emotional commitment, the dependence the parties had upon each other and other relevant factors must be considered. As it is made clear in the Explanatory Statement, the examples provided only may justify the waiver of the Schedule 3 criteria. They do not provide a criterion that, if satisfied, becomes a compelling reason for not applying the Schedule 3 criteria and the Explanatory Statement is not part of the statutory text which is to be considered.
53. The Tribunal accepts the documented evidence that the relationship of the parties commenced 3 years and 8 months after the substantive visa of the applicant ceased, while noting the applicant had previously applied for, during the allowable period, a Parent Visa with the sponsorship of her Australian resident daughter, but due to the complete breakdown of the relationship between the applicant and her daughter and the daughters family as a result of inappropriate access to and use of funds of the applicant, the daughter had cancelled her sponsorship of a Parent Visa on 7/12/15 and this action has prevented the applicant from applying for a visa within the allowable period of a substantive visa ceasing.
54. The Tribunal accepts the documented evidence that at the time of the substantive visa of the applicant ceasing, she had been forced by her Australian resident daughter to find alternative accommodation and to take legal action to recover funds accessed and used illegally by her daughter.
55. The Tribunal accepts the documented evidence that the applicant has 3 daughters, with one living in Great Britain, one living in New Zealand and one living in Australia, while noting the relationship with the Great Britain residing daughter has also dissolved, as a result of actions by the daughter.

56. The Tribunal accepts the documented evidence, from the applicant, sponsor and New Zealand residing daughter, of the good relationship the two have and the good relationship the daughter has with the sponsor.
57. The Tribunal accepts documented evidence that the applicant came to Australia with the intention of remaining, came on the basis of a, at the time, good relationship with her Australia residing daughter, and since this relationship dissolved the applicant has determined that with the friends she has made in Australia she wished to stay, resulting in her forming a relationship with the sponsor in November 2016 and marrying in November 2017.
58. The Tribunal determined that the breakdown of the relationship of the applicant and the Australia residing daughter, particularly the timing and impact of the previous Parent Visa application, to be beyond the control of the applicant and support compelling reasons for the waiver.
59. The Tribunal accepts the documented evidence of the "significant and debilitating" health issues of the sponsor, and the assistance provided by the applicant in ensuring he attends medical appointments, adheres to the requirement to take the numerous medicine prescriptions required of him on a daily basis and considers this to support a compelling reason for the waiver.
60. The Tribunal accepts the documented evidence of family and friends on the influence the applicant has had to the quality of life of the sponsor and considers this to support a compelling reason for the waiver.
61. The Tribunal accepts the documented evidence proving by a variety of parties consistently enforcing the relationship of the parties and the importance that each has played in the life of the other since November 2016, and the documented evidence of the New Zealand residing daughter of the applicant, who has travelled to Australia to be with the parties, of she be fully supportive of the relationship and marriage considers this to support a compelling reason for the waiver.
62. The Tribunal, from the documented evidence of the parties and a review of family issues of the applicant, accepts that the sponsor has been a significant supporter of the applicant in dealing with the fall out of the breakdown of the relationship of the applicant with her Australian resident daughter, in all areas of her health and emotional well-being needs and has devoted all of his hours to the sponsor, and considers the probable outcomes impacting on the sponsor of a separation of the parties, being the applicant returning to Great Britain and lodging an off-shore partner visa application, to support a compelling reason for the waiver.
63. The Tribunal accept the documented health issues of the sponsor make it impossible for him to fly, so if the applicant is required to leave Australia and lodge an off-shore partner visa, it will be impossible for him to be with her, potentially for several years, noting at the age of the parties this is significant period of separation and a compelling reason for the waiver.
64. The Tribunal accepts the documented evidence of the medical history of the sponsor and the confirmation of the important role undertaken by the applicant to support the physical health of the sponsor to support a compelling reason for the waiver.
65. The Tribunal accepts that it is reasonable to expect a level of emotional hardship and significant risk to the physical health of the sponsor to be experienced if the applicant is separated from the sponsor for any extended period of time. The Tribunal acknowledges that this is a common experience for other people who apply to migrate to Australia from offshore

on the basis of their relationship with an Australian citizen or permanent resident. The Tribunal accepts that emotional hardship can be considered a compelling reason for not applying Schedule 3 criteria and the Tribunal determines that the evidence presented by the applicant and the sponsor is sufficient to substantiate the impact of emotional hardship.

66. On evidence the Tribunal is satisfied there are compelling reasons for not applying Schedule 3 criteria as the applicant provides emotional, physical and financial support to his sponsor in Australia and this would be significantly impacted if he was required to leave Australia, develop an income stream, lodge an offshore partner visa application and await a decision.

Whether the parties are in a spouse or de facto relationship

67. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d).
68. In forming an opinion about these matters, regard must be had to all the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

69. At the time the visa application was made the visa applicant provided evidence of being married to the sponsor with an Australian Certificate of Marriage dated 22 November 2017.
70. The Tribunal has regard to the document and finds that the parties are married to each other at the time of the visa application and this decision, with the marriage valid for the purposes of the Act as required by s.5F(2)(a).

71. Migration Act, 1958, Section 376 Certificate issued by Minister

72. The Tribunal advised the parties, by correspondence on 9 April 2020, of a Section 376 Certificate issued by the delegate of the Minister covering 4 pages included in the Department file, being submissions received anonymously on 5 November 2017 and 21 November 2017 on what was stated to be a contrived relationship, while inviting the parties to give comment on or respond on in writing by 23 April 2020.
73. The Tribunal notes the response from the applicant of 14 April 2020 outlining reasons why the 2 anonymous reports on her relationship and marriage to the sponsor are not correct.
74. The Tribunal has determined that the information covered by the Certificate is not adverse information impacting on the decision.

CLAIMS AND FINDINGS

Financial aspects of the relationship that must be considered include:-

- (i) *any joint ownership of real estate or other major assets; and*
- (ii) *any joint liabilities; and*
- (iii) *the extent of any pooling of financial resources, especially in relation to major financial commitments; and*

- (iv) *whether one person in the relationship owes any legal obligation in respect of the other; and*
 - (v) *the basis of any sharing of day-to-day household expense*
75. The Tribunal determines from the documented evidence of the parties that at the time of the visa application and this decision, the parties did and do have joint ownership of a vehicle, while not having joint ownership of real estate or other major assets.
 76. The Tribunal determines from the documented evidence that at the time of the visa application and this decision, the parties did not and do not have any joint liabilities.
 77. The Tribunal determines from the documented evidence of the parties that at the time of the visa application and this decision, none of the parties had or has a legal obligation with regard to the other.
 78. The Tribunal accepts the documented evidence of the sponsor being retired.
 79. The Tribunal accepts the documented evidence of the applicant being retired.
 80. The Tribunal accepts the documented of the parties holding a joint names bank account at the Commonwealth Bank from 6 November 2017 and 2 joint names accounts at the ANZ Bank from December 2017, in to which the Centrelink benefit of the sponsor is deposited and the applicant has placed her significant funds, with these accounts used to pay for household costs and social expenses and determines, at the time of the visa application and this decision, the joint account represents the sharing of day-to-day household expenses.
 81. From the documented evidence provided by the parties the Tribunal determines the parties pool financial resources, especially in relation to major financial assets or commitments.
 82. *Nature of the household aspects that must be considered include:-*
 - (i) *any joint responsibility for the care and support of children; and*
 - (ii) *the living arrangements of the persons; and*
 - (iii) *any sharing of the responsibility for housework*
 83. The Tribunal accepts the photographic and documented evidence of the applicant having 3 adult children living in Great Britain, Australia and New Zealand.
 84. The Tribunal accepts the photographic and documented evidence of the sponsor having 3 adult children living in Australia.
 85. The Tribunal accepts the documented evidence of the relationships the parties has with their children and determines the parties provide a level of care and support for the children they are engaged with that is normally given to adult children.
 86. The Tribunal accepts the documented evidence of the support from the children they are engaged with for the relationship and marriage.
 87. The Tribunal accepts the photographic, documented and oral evidence of the parties living arrangements and determines, at the time of application and this decision, they have lived together since November 2017, initially in a converted bus located on a rural property of a friend and since December 2019 in a joint name rented home.
 88. The Tribunal accepts the documented, photographic and oral evidence, confirmed by the parties independently, on the roles each undertakes in the household, noting the physical capacity of the sponsor is restricted as a result of a work place injury in 2007, and

determines, at the time of application and this decision, the applicant does the majority and the sponsor a minor amount of housework.

89. *Social aspects of the relationship that must be considered include:-*

- (i) whether the persons represent themselves to other people as being married to each other; and*
- (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and*
- (iii) any basis on which the persons plan and undertake joint social activities*

90. The Tribunal accepts the photographic and documented evidence and determines at the time of application and this decision that the parties were married in Australia on 22 November 2017, with family and friends in attendance, and represent themselves to other people at all times as being married to each other.

91. The Tribunal accepts the documented evidence of the parties that the children of the sponsor did not attend the wedding, noting that the New Zealand residing daughter was unable to be in Australia but visited the parties during 2018.

92. The Tribunal accepts the documented, photographic and oral evidence of family and friends of the parties and determines, at the time of application and this decision, the opinion of family, friends and acquaintances as being supportive of the relationship and marriage.

93. The Tribunal accepts the photographic, documented and oral evidence, confirmed by the parties independently, and determines, at the time of application and this decision, the parties plan and undertake joint social activities.

94. *Nature of the commitment to each other that must be considered include:-*

- (i) the duration of the relationship; and*
- (ii) the length of time during which the persons have lived together; and*
- (iii) the degree of companionship and emotional support that the persons draw from each other; and*
- (iv) whether the persons see the relationship as a long-term one.*

95. The Tribunal accepts the documented evidence that the first husband of the applicant died in 2006 and the sponsor and his first wife divorced in 1993.

96. The Tribunal accepts the documented evidence of the parties meeting in October 2016, being in a relationship from November 2016, committed to a shared life from July 2017 and marrying in November 2017.

97. The Tribunal accepts the photographic and documented evidence of the parties living arrangements and determines, at the time of application and this decision, they have lived together since November 2017.

98. The Tribunal accepts the documented evidence of treating medical professionals of the parties relationship and determines, at the time of application and this decision, and in particular noting the physical health issues the sponsor is dealing with and more recently the concern of parties if the applicant is not being permitted to remain in Australia, and determines, at the time of the visa application and this decision, that a high level of companionship and emotional support is provided by each of the parties to the other.

99. The Tribunal accepts the oral evidence of the parties and determines, at the time of application and this decision, they have had and continue to have an ongoing commitment to each other and see the relationship and marriage as being long-term.
100. *Any other circumstances of the relationship*
101. The Tribunal accepts the documented evidence of the applicant being deaf and being advised that if required to provide oral evidence it will be required to be part of a face to face hearing.
102. The Tribunal considered all the evidence on the circumstances of the parties and determines that the evidence supports a finding that, at the time of the application and this decision, the parties have had and continue to have a mutual commitment to a shared life together as a married couple to the exclusion of all others, with the relationship genuine and continuing.
103. The Tribunal accepts that the parties met on 28 October 2016 and being in a relationship soon after, committed to a shared life together on 14 July 2017 and married on 22 November 2017 and determines, at the time of the application and this decision, the parties live together.
104. On the basis of the above the Tribunal is satisfied that the requirements of s.5F(2) are met at the time of the visa application and this decision. The Tribunal is further satisfied that the sponsor is not prohibited by subclause (2B) from being a sponsoring partner.
105. The applicant therefore meets cl.820.211(2)(a). The Tribunal accepts the applicant was sponsored and therefore meets cl.820.211(2)(c). The applicant meets the substantive visa holder, Schedule 3 requirements cl.820.211(2)(d)(ii). Accordingly, the applicant meets cl.820.211(2). The applicant continues to meet these requirements at the time of decision and therefore meets cl.820.221(1).
106. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

107. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- Cl.820.211(2)(d)(ii) of Schedule 2 to the Regulations
 - cl.820.211(2) of Schedule 2 to the Regulations
 - cl.820.221(1) of Schedule 2 to the Regulations

Steven Griffiths
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).